

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

DANNY JOHNSTON, §
§
Plaintiff / Counter-Defendant, §
§
v. §
§
PATRICIA ANN JOHNSTON, §
§
Case No. 6:23-cv-413-JDK
Defendant / Counter-Plaintiff, §
§
v. §
§
EAST TEXAS OIL FIELD §
CONSTRUCTION, LLC, §
§
Counter-Defendant. §

**ORDER ADOPTING THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Before the Court is Counter-Defendants Danny Johnston and East Texas Oil Field Construction, LLC's Motion to Dismiss for Lack of Subject Matter Jurisdiction Pursuant to Federal Rule of Civil Procedure 12(b)(1). Docket No. 17. This case was referred to United States Magistrate Judge K. Nicole Mitchell for findings of fact, conclusions of law, and recommendations for disposition.

On April 19, 2024, Judge Mitchell issued a Report recommending that the Court deny the motion to dismiss. Docket No. 41. A copy of the Report was sent by certified mail to the address provided by Counter-Defendants. Mr. Johnston filed an acknowledgment of receipt as to the Report on April 19, 2024. Docket No. 43. No written objections have been received.

This Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

Here, no objections were filed. The Court therefore reviews the Magistrate Judge's findings for clear error or abuse of discretion and reviews the legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law").

Having reviewed the Magistrate Judge's Report and the record in this case, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Docket No. 41) as the findings of this Court and **DENIES** Counter-Defendants' motion to dismiss (Docket No. 17).

So ordered and signed on this

May 8, 2024



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE